

UNITED STATES

v.

LUTHER E. HOBSON

IBLA 94-327

Decided December 12, 1997

Appeal from a Decision by Administrative Law Judge John R. Rampton, concluding that the Native allotment application A-059268 should be approved with respect to the 88.3 acres described therein, that it may be amended to include 160 acres and that BLM should initiate proceedings to recover 4.91 acres that had been patented as a homesite.

Affirmed in part, as modified; dismissed in part.

1. Administrative Authority: Generally--Administrative Procedure: Adjudication--Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments--Patents of Public Lands: Suits to Cancel

In settlement of litigation involving Native allotment applications that conflicted with land conveyed to the State of Alaska, the Department adopted stipulated procedures, the use of which has been extended to all types of conveyed land. If BLM finds that a Native's proof of entitlement to the patented land is insufficient, BLM will conduct a hearing, after which the BLM presiding officer will make a decision to reject or refer the claim to the Solicitor's Office, which decision is final for the Department.

2. Administrative Authority: Generally--Administrative Procedure: Adjudication--Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments--Patents of Public Lands: Suits to Cancel

Where all the land described in an Alaskan Native allotment application has been patented, the Aguilar procedures require a hearing before a BLM hearing officer, whose decision, when issued, is final for the Department and not subject to appeal to this Board. However, in cases where the parcel in part describes lands conveyed out of U.S. ownership and a hearing on

the entire parcel is required, Government contest proceedings are to be used. Despite the overlap in issues in such contest proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory. Because the Aguilar procedures make no provision for review of such an investigatory determination by this Board, we must dismiss BLM's appeal from the administrative law judge's determination that BLM should initiate proceedings to recover title to the patented land.

3. Administrative Authority: Generally--Administrative Procedure: Adjudication--Alaska: Native Allotments--Alaska Native Claims Settlement Act--Patents of Public Lands: Suits to Cancel

When a Native allotment applicant contends that he communicated his intention to apply for 160 acres to BIA at the time the application originally was submitted, but the application reflects less than the 160 acres, the issue is whether there was an application for 160 acres pending before the Department on Dec. 18, 1971, the effective date of the Alaska Native Claims Settlement Act.

4. Evidence: Generally--Evidence: Sufficiency--Evidence: Weight--Rules of Practice: Evidence

When the resolution of disputed facts is clearly premised upon an administrative law judge's findings of credibility, which are in turn based upon his reaction to the demeanor of the witnesses, and such findings are supported by substantial evidence, they ordinarily will not be disturbed by this Board. The basis for this deference is the fact that the judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to evaluate the weight to be given to conflicting testimony.

APPEARANCES: Joseph R. Faith, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for Appellant; Joseph D. Darnell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management; Allan L. Woodward, Anchorage, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

By Decision dated January 20, 1994, Administrative Law Judge John R. Rampton concluded that the Native allotment application of Luther E. Hobson, Sr., (A-059268) should be approved with respect to

the 88.3 acres described therein, that Hobson should be allowed to amend his application to include 160 acres, and that the Bureau of Land Management (BLM) should initiate proceedings to recover 4.91 acres that had been patented to Allan Woodward as a homesite. The BLM has appealed from this Decision, contending that it errs in allowing Hobson to amend his application to encompass 160 acres, in concluding that Hobson's qualifying use includes 4.91 acres patented to Woodward, and in directing BLM to initiate proceedings to recover title to that parcel. (Statement of Reasons (SOR) at 1-2.) The BLM does not appeal from the Decision's finding that Hobson qualified for the 88.3 acres described in his application, which excludes the acreage patented to Woodward. *Id.* We dismiss BLM's appeal concerning Judge Rampton's directive to initiate proceedings to recover title to the patented land for lack of jurisdiction and affirm Judge Rampton's determination that the application included 160 acres, as modified below.

With respect to Judge Rampton's determination concerning the 4.91 acres patented to Woodward, we note that when the Department conveys legal title to the land, it effectively loses jurisdiction to adjudicate conflicting interests in the lands so conveyed. Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897); Bay View, Inc., 126 IBLA 281, 286 (1993). In Heirs of C.H. Creciat, 40 Pub. Lands Dec. 623, 624-25 (1912), quoted in Bay View, *supra*, at 288, the Department made clear that a determination to seek reconveyance of patented land is not an adjudication of the rights of those claiming conflicting interests:

After patent has issued, the purpose of inquiry and investigation is for information of the Department, whether proper ground exists to seek cancellation of the patent by suit.

Such proceeding is not an adversary one, but is an administrative proceeding for information of the Department and may be conducted in such manner as suits its own convenience, and as is, in its own judgment, best calculated to attain its object.

It determines no right of parties adversely claiming land no longer public, or property of the United States.

[1] In settlement of litigation involving Native allotment applications that conflicted with land conveyed to the State of Alaska, Aguilar v. United States, 474 F. Supp. 840, 846 (D. Alaska 1979), the Department adopted stipulated procedures, the use of which "has been extended to all types of conveyed land." Aguilar and Title Recovery Handbook for Native Allotments (Handbook), at 2. Consistent with Creciat, *supra*, Aguilar Stipulation No. 3 provides that "all further proceedings until a federal court action to cancel the * * * patent is initiated, shall be for investigatory purposes only and shall not constitute an administrative agency adjudication of the rights of third parties." If BLM finds that a Native's proof of entitlement to the patented land is insufficient, BLM will conduct a hearing. (Aguilar Stipulation No. 6.)

"Based on the evidence presented at the hearing or contained in the case file, the BLM presiding officer will make a decision to reject or refer the claim to the Solicitor's Office, which decision shall be final

for the Department." Id. In the case of applications found to be valid, the Solicitor's Office either pursues voluntary reconveyance or advises BLM to do so. (Handbook at 16.) If voluntary settlement with the landowner is not possible, the matter is to be referred to the Department of Justice with a recommendation to institute suit to cancel the patent. (Aguilar Stipulation No. 9.)

[2] Where all the land described in a Native allotment application has been patented, the Aguilar procedures make no provision for a contest hearing before an administrative law judge, whose decision would be subject to appeal to this Board. Instead, the procedures require a hearing before a BLM hearing officer, whose decision, when issued, is final for the Department and not appealable to this Board. However, in cases such as this, where the parcel in part describes lands conveyed out of U.S. ownership and a hearing on the entire parcel is required, Government contest proceedings are to be used. (Handbook at 11.) Despite the overlap of issues in such contest proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory, and the decision of an administrative law judge affecting the patented land is the functional equivalent of a BLM hearing officer in cases where all of the land claimed by the Native has been patented.

Because the Aguilar procedures make no provision for review of such a determination by this Board, we must dismiss BLM's appeal from Judge Rampton's directive to initiate proceedings to recover title to the patented land. If the Federal district court is persuaded to order a reconveyance of the patented land embraced in a Native allotment application so that BLM acquires jurisdiction to consider the rights of the adverse parties, then an adjudication by BLM of the applicant's entitlement to an allotment of the new lands would necessarily be appealable to the Board. See 43 C.F.R. § 4.410; Bay View, supra, at 288.

Turning now to BLM's appeal from Judge Rampton's determination that Appellant's application may be amended to include a total of 160 acres, the claimed land embraces an area surrounding Priest Rock on Lake Clark in Alaska. Hobson, a Dena'ina Indian, was born in Nondalton, Alaska, on January 2, 1930, and began visiting the claimed land with his family when he was an infant. The family went to the land each fall to put up fish and hunt bear, moose, and other animals within an approximate 10-mile radius of Priest Rock. (Decision at 4.) At age 14, Hobson used his own boat to catch fish for his dogs at Priest Rock and in later years, hunted moose and grouse. Judge Rampton concluded:

With the exception of the one- or two-year period around 1961, contestee hunted, fished, and picked berries on the land for a substantial number of weeks or months each year for a period of more than 5 years, commencing in the mid-1940's and ending in 1973. His use and occupancy of the land was thus substantially continuous during this period, and not merely intermittent use.

(Decision at 8.)

The BLM attacks Judge Rampton's conclusion that Hobson commenced qualifying use and occupancy of the land in the 1940's, contending that Hobson's use was not potentially exclusive of others until 1963, when a visit by a Bureau of Indian Affairs (BIA) representative changed the way Hobson's community thought about the land at issue. (SOR at 5-13.) This argument is relevant to the issue of whether Hobson established qualifying occupancy of the 4.91 acres prior to Woodward's occupancy in the 1950's, a matter that is not properly before us. Thus, the only issues before us are whether Hobson expressed an intention to apply for 160 acres instead of the 88 acres described in his application and, if so, whether he can now "correct" the land description to conform to that intention.

Judge Rampton referred to section 905(c) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 43 U.S.C. § 1634 (1994), which provides: "An allotment applicant may amend the land description contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed."

Citing Olympic v. United States, 615 F. Supp. 990, 995 (D. Alaska 1985), Judge Rampton noted Congressional acknowledgment of the errors in describing land sought by Natives and concluded that a liberal construction of section 905(c) supported his decision to allow an amendment of Hobson's application. (Decision at 6-7.)

The BLM asserts that section 905(c) does not authorize correction of descriptions to add land to that described, citing decisions such as Herman T. Kroener, 124 IBLA 57, 65 (1992); Mitchell Allen, 117 IBLA 330 (1991); and William Carlo, Jr., 104 IBLA 277 (1988). (SOR at 14-16.) Judge Rampton found the instant case to be distinguishable from Carlo, noting that the applicant there sought to "amend" the description to include a new parcel in a different location. Hobson's original application did not describe land other than the land he desired; there is no question that he wanted to receive an allotment for the land so described, and it is immaterial whether the additional land he seeks is contiguous to the 88 acres or not. Thus, it was an error to rely upon section 905(c), and an error to characterize Hobson's claim for additional land as an "amendment."

[3] When a Native allotment applicant contends that he communicated his intention to apply for 160 acres to BIA at the time the application originally was submitted, but the application reflects less than the 160 acres, the issue is whether there was an application for 160 acres pending before the Department on December 18, 1971, the effective date of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1628 (1994). For example, in Allen, *supra*, Allen filed an application for an 80-acre parcel (Parcel A), 40 acres of which had previously been rejected. He contended that two 80-acre parcels originally were part of the same application and sought to amend his allotment description because the

second 80-acre parcel (Parcel B) had been omitted by BIA from his application. However, he also sought to increase the acreage of Parcel B from 80 acres to 120 acres because the 40 acres had been eliminated from Parcel A.

We did not allow the addition of 40 acres to Parcel B, because "Allen ha[d] consistently contended that Parcel B, as originally applied for, contained 80 acres." Allen, supra, at 337. In particular, we concluded that "Allen is not now claiming that he misdescribed the land in Parcel B; rather, he seeks to compensate for the 40 acres in Parcel A rejected by BLM in 1984, to make his total allotment 160 acres. This he cannot do." Id. Allen's claim was limited to the 80 acres originally comprising Parcel B because there was no evidence that he had intended to apply for a Parcel B containing 120 acres when he filed the application. In contrast, Hobson's contention is that the land he originally intended to describe in his Native allotment application comprised 160 acres.

What is therefore more instructive in the instant appeal is that part of our ruling in Mitchell Allen finding that Allen was entitled to a hearing "to establish that he did, indeed, timely make an application for Parcel B with officials of the BIA." Allen, supra, at 337, citing William Carlo, Jr., 104 IBLA 277, 282 (1988) and Donald Peter, 107 IBLA 272, 276 (1989).

Similarly, in the Carlo and Peter cases, the appellants claimed they had timely applied for Native allotments and that they had applied for more than the one parcel ultimately described therein. As we stated in Peter, supra,

[b]ecause appellant is not contending that a description on his application depicts the wrong land but rather is arguing that other land should have been included in his application in addition to the land actually described, section 905(c) of ANILCA does not apply. * * * This does not end the matter, however. Appellant, in effect, is arguing that, as submitted to BIA, there was a second parcel in his application.

Id. at 276.

Implicit in these decisions is the recognition that in appropriate circumstances a hearing can result in an increase in the acreage of a Native allotment application. Mitchell Allen, supra, at 336-37; Donald Peter, supra, at 272; William Carlo, Jr., supra, at 282. Thus, where the administrative law judge finds that a party has demonstrated by a preponderance of evidence that he communicated his intention to describe a larger parcel in the application, a portion of which was inadvertently or erroneously omitted through no fault of the applicant, that finding will support the conclusion that the appellant had a Native allotment application for the larger parcel pending before the Department on December 18, 1971, and it will be sustained. Bureau of Land Management v. William Carlo, Jr., 133 IBLA 206, 211-12 (1995).

As we have said, to the extent Judge Rampton may have viewed the issue as one involving an amendment of an application under section 905(c), it was error and the Decision is modified accordingly. To reiterate, an amendment under section 905(c) is limited to circumstances in which the original application describes land different from that for which the applicant intended to apply, and that clearly is not the case before us. There is no question, however, that Judge Rampton found that Hobson had established by a preponderance that BIA had failed to prepare the description in accordance with his intent.

The BLM objects to this finding, arguing that the sole evidence on the point is Hobson's own testimony. We view the record differently. The Government elected to establish its prima facie case by introducing a number of documents through a single BLM witness who had no personal knowledge of the facts of the case. (Tr. at 31.) The evidence included a copy of the Native allotment field report, (Ex. G-1), that documented the results of the field examination of Hobson's claim on June 11, 1975, at which Hobson was present with two BLM field examiners.

The Findings and Conclusions section states that "Hobson identified the claimed lands from the air which had been incorrectly described on the application (see sketch map for correct location)." (Ex. G-7, at 2.) No such sketch was attached to the document in the record on appeal. In addition, the field report asserts: "The applicant verified the location of the subject lands and he was interviewed at this time." *Id.* These statements are not amplified or otherwise explained in the field report or other evidence introduced by BLM, and thus there is no contemporaneous record of what Hobson said about the error, what land he identified to the field examiners, or the nature of the description error. We note, however, that Hobson's 1963 and 1969 Native allotment applications and associated maps, (compare Exs. C-11 with G-1 and G-2), coupled with Hobson's testimony, (Tr. at 81-82, 84-85), confirm an error or inconsistency regarding the land he claimed.

While the context of these statements does not appear from the record, the only person at the hearing who was able to testify as to what was said and done was Hobson, who maintained that he had communicated his intention to claim 160 acres when the BIA prepared the Native allotment application on his behalf. Indeed, Hobson testified that the BIA informed him that he could not apply for different parcels because he was required to describe area. (Tr. at 82.)

[4] Under the circumstances, Judge Rampton could find that the evidence given by Appellant's witnesses and the documentary evidence constituted substantial evidence supporting his decision. See *R.C.T. Engineering, Inc. v. Office of Surface Mining Reclamation and Enforcement*, 121 IBLA 142, 151-52 (1991). Although BLM questions the testimony on this issue, (Tr. at 81-86), we do not find it to be so lacking in credibility as to require us to overturn Judge Rampton's conclusion that Hobson preponderated. "[W]hen the resolution of disputed facts is clearly premised upon a Judge's findings of credibility, which are in turn based upon the Judge's reaction to the demeanor of the witnesses, and such findings are supported

by substantial evidence, they ordinarily will not be disturbed by the Board. The basis for this deference is the fact that the Judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to judge the weight to be given to conflicting testimony." Bureau of Land Management v. Carlo, supra, at 211. Here, there was no conflicting testimony.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed in part, and the Decision is affirmed in part, as modified.

T. Britt Price
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge